

1992—No. 138

INDUSTRIAL RELATIONS ACT 1991—REGULATION

(Industrial Relations Regulation 1992)

NEW SOUTH WALES



[Published in Gazette No. 40 of 27 March 1992]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Industrial Relations Act 1991, has been pleased to make the Regulation set forth hereunder.

JOHN FAHEY
Minister for Industrial Relations.

CHAPTER 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Industrial Relations Regulation 1992.

Commencement

2. This Regulation commences on the commencement of the Industrial Relations Act 1991.

Definitions

3. In this Regulation:

“**approved form**” means a form approved by the Industrial Registrar;

“**the Act**” means the Industrial Relations Act 1991.

CHAPTER 2—PROVISIONS RELATING TO CONDITIONS OF EMPLOYMENT**PART 1—PROVISIONS RELATING TO AWARDS****Form of awards**

4. An award is to be in such form as:
- (a) best expresses the decision of the Commission; and
 - (b) avoids unnecessary technicality; and
 - (c) can be easily understood; and
 - (d) allows for the fast, efficient and inexpensive publication of the award.

Standardised clauses and format of awards

5. (1) The Commission may approve standard clauses relating to conditions of employment for inclusion in awards.

(2) The Commission may from time to time approve a standard format for awards.

(3) In order to approve a standard clause or format, the Commission is to be constituted by the President of the Commission or by the Full Commission (including the President).

(4) Notice of any proceedings at which the Commission proposes to approve a standard clause or format is to be given to each State peak council by the Industrial Registrar.

(5) An approved standard clause or format has effect when a copy, signed by the President of the Commission, is published in the Industrial Gazette.

(6) When the Commission makes an award, any departure from a relevant approved standard clause or format, and the reason for the departure, are to be noted in the Commission's decision.

Details of awards when handed down

6. (1) The Commission, when it hands down an award, is to provide the following details (subject to any direction of the President of the Commission):

- (a) a statement of whether the award is a principal award or a variation of an award;
- (b) in the case of a variation—the full name of the award that is varied and (if practicable) a reference to the clauses which are affected;

- (c) a summary of the changes made by the award;
 - (d) the proposed date of effect of the award.
- (2) The Commission may, at any time, direct a party to the proceedings to prepare the relevant details.

Settlement of minutes of an award after it is handed down

7. (1) As soon as practicable after the Commission hands down an award for which minutes have not been prepared, the Industrial Registrar is to prepare and settle minutes of the award.

(2) The Industrial Registrar may prepare and settle minutes of an award without giving notice of intention to do so to the parties to the proceedings or to any other person who appeared in the proceedings.

(3) If the Commission directs or the Industrial Registrar decides that the parties or such a person should attend before the Industrial Registrar to settle the minutes of the award, the Industrial Registrar is to:

- (a) notify each such party or person of the date on which and the time and place at which the Industrial Registrar proposes to settle the minutes of the award; and
- (b) provide a copy of the proposed minutes prepared by the Industrial Registrar to each such party or person.

(4) The Industrial Registrar may settle the minutes of the award in the absence of any such party or person who does not appear and may adjourn the matter to another time, date or place.

(5) If any doubt or difficulty arises in the settlement of the minutes of an award, the Industrial Registrar may refer the matter to the member of the Commission who handed down the award or to the President of the Commission.

Preparation of minutes of an award before it is handed down

8. (1) The Commission may, if it intends to make an award:

- (a) direct one or more of the parties to proceedings to prepare, within the period specified by the Commission, minutes of the proposed award; or
- (b) direct the Industrial Registrar to prepare minutes of the proposed award.

(2) Any such minutes prepared by a party to the proceedings are to be lodged with the Industrial Registrar. The Industrial Registrar may make any necessary alterations to them before they are submitted to the Commission.

Application of Part to contract determinations

9. The provisions of this Part relating to awards apply to contract determinations.

PART 2—PROVISIONS RELATING TO ENTERPRISE AGREEMENTS

Statutory instruments deemed to be award for purposes of section 118 (Enterprise agreements prevail over awards)

10. Parts 3, 5 and 6 of the Public Sector Management (General) Regulation 1988 are declared to be an award for the purposes of section 118 of the Act.

Form of certificate of Commissioner for Enterprise Agreements

11. For the purposes of section 127 (4) of the Act, the prescribed form of certificate of the Commissioner for Enterprise Agreements is the following form:

..... **IN THE MATTER OF** an application for registration of an enterprise agreement between *(list names of all parties to the enterprise agreement)*, being No. of 19

CERTIFICATE OF COMMISSIONER FOR ENTERPRISE AGREEMENTS—SECTION 127 (4)

THIS IS TO CERTIFY THAT, pursuant to section 127 (4) of the Industrial Relations Act 1991, I, being the Commissioner for Enterprise Agreements/an officer of the Department of Industrial Relations, Employment, Training and Further Education authorised by the Commissioner for Enterprise Agreements*:

- (a) have, in the manner specified below, met with the named parties to the enterprise agreement which has been lodged with the Industrial Registrar for registration; and
- (b) have established that the parties demonstrate an understanding of:
 - (i) their rights and obligations under the agreement and sections 115–145 of the Act; and
 - (ii) conditions of employment under the award, former industrial agreement or enterprise agreement specified below as applying to the parties.

Dated:..... 19.....

.....
Commissioner for Enterprise
Agreements/ Authorised
Departmental Officer*

- 1. Meeting held jointly/separately* with parties.
- 2. Meeting held on 19..... with
.....
(enterprise employer)
or employer’s representative.....
(name, position)
- 3. Meeting held on 19 with
.....
(industrial union(s)/individual employees/works committee)*
or employees’ representative
(name, status)
- 4. Currently applicable awards, former industrial agreements or other
enterprise agreements:
.....
.....

(*Delete whichever is inapplicable)

Persons entitled to inspect register of enterprise agreements without fee

12. The following persons are prescribed persons for the purposes of section 129 (2) (c) of the Act:

- (a) the Commissioner for Enterprise Agreements;
- (b) officers for the time being of the Industrial Advisory Service or Industrial Relations Unit of the Department.

Fee for copying from register of enterprise agreements

13. For the purposes of section 129 (3) of the Act, the prescribed fee for making a copy of any document kept in the register of enterprise agreements is:

- (a) \$10; or
 - (b) \$2 for each page copied,
- whichever is the greater.

**PART 3—PROVISIONS RELATING TO ENFORCEMENT OF
CONDITIONS OF EMPLOYMENT****Orders of Commission that may be enforced as awards**

14. Pursuant to section 171 of the Act, any order of the Commission under section 237 of the Act (Order for reinstatement of injured employee) is prescribed for the purposes of Division 2 of Part 4 of Chapter 2 of the Act.

Written particulars of wages to be supplied to employees

15. For the purposes of section 182 of the Act, the following particulars are to be supplied by the employer to an employee when a payment of wages is made:

- (a) the gross amount of wages, including overtime and other earnings;
- (b) the amount paid as overtime or such information as will enable the amount paid as overtime to be calculated by the employee;
- (c) the amount deducted for taxation purposes;
- (d) the particulars of all other deductions;
- (e) the net amount paid.

Time-sheets and pay-sheets

16. For the purposes of section 183 of the Act, time-sheets and pay-sheets relating to employees are to be kept by the employer in English and are to contain the following particulars:

- (a) the full name of the employer;
- (b) the full names of the employees;
- (c) the occupation and classification of the employees under the relevant award or agreement;
- (d) the number of hours worked by each employee during each week;
- (e) if the relevant award or agreement limits the daily hours of work and provides for the payment of daily overtime—the number of hours worked by each employee concerned during each day and the times of starting and ceasing work;
- (f) if the relevant award or agreement prescribes a weekly, daily, hourly or other period rate of wage—the rate of wages per week, day, hour or other period at which each employee is paid;
- (g) if the relevant award or agreement prescribes piece-work—the number and description of pieces made by each employee and the rate per piece at which the employee is paid;

- (h) the amount of wages paid to each employee, showing deductions from those wages;
- (i) if an employee is an apprentice—the person's age and the date the person became an apprentice;
- (j) such other particulars as are necessary to show that the requirements of the relevant award or agreement relating to the hours, rates or wages (including overtime and other payments) are being complied with.

CHAPTER 3—PROVISIONS RELATING TO DISPUTES, INDUSTRIAL ACTION AND OTHER MATTERS

Grievance and dispute settlement procedures in existing awards etc.

17. (1) An award or industrial agreement under the Industrial Arbitration Act 1940 (and continued in force under the Act) is taken to have inserted in it procedures of the kind set out in paragraphs 1 and 2 of section 185 of the Act (Minimum procedures for awards).

(2) This clause does not apply to an award or agreement which already contains or adopts procedures of the kind so referred to.

(3) The Industrial Registrar is not required to reprint an award because of the operation of this clause.

CHAPTER 4—PROVISIONS RELATING TO THE INDUSTRIAL RELATIONS COMMISSION AND OTHER BODIES

Commonwealth industrial authority (dual appointments)

18. For the purposes of section 321 of the Act, the Australian Industrial Relations Commission (an industrial authority constituted under a law of the Commonwealth) is prescribed.

Nominators of Contract Regulation Committees

19. The following persons are prescribed persons for the purposes of the relevant specified provision of section 331 (1) of the Act:

- (a) for the purposes of section 331 (1) (b) (i)—the chief executive officer of an association of employing contractors where the employing contractors are bailors of public vehicles under contracts of bailment;

- (b) for the purposes of section 331 (1) (b) (ii)—the chief executive officer of an association of employing contractors where the employing contractors are principal contractors under contracts of carriage;
- (c) for the purposes of section 331 (1) (c) (i)—the chief executive officer of an association of contract drivers;
- (d) for the purposes of section 331 (1) (c) (ii)—the chief executive officer of an association of contract carriers.

Regions

20. Pursuant to section 340 (4) of the Act, the following areas of New South Wales are prescribed as regions for the purposes of the Act:

- (a) **the Hunter Region**—comprising the local government areas of the City of Cessnock, City of Lake Macquarie, City of Maitland, City of Newcastle, Shire of Dungog, Shire of Gloucester, Shire of Great Lakes, Shire of Merriwa, Shire of Murrurundi, Shire of Muswellbrook, Shire of Port Stephens, Shire of Scone, Shire of Singleton and Shire of Wyong;
- (b) **the Illawarra-South Coast Region**—comprising the local government areas of the City of Wollongong, Municipality of Shellharbour, Municipality of Kiama and City of Shoalhaven.

Offices of Industrial Registrar

21. Any document that is required to be lodged or filed with the Industrial Registrar is to be lodged or filed at the office of the Industrial Registry in Sydney.

CHAPTER 5—PROVISIONS RELATING TO ORGANISATIONS OF EMPLOYEES AND EMPLOYERS

PART 1—PRELIMINARY PROVISIONS

Extension of time by Industrial Registrar

22. The Industrial Registrar may extend any period of time prescribed by this Chapter (whether or not the period has expired) subject to such conditions (if any) that the Industrial Registrar may impose.

**PART 2—PROVISIONS RELATING TO REGISTRATION AND
INCORPORATION OF ORGANISATIONS****Application for registration by organisation**

23. For the purposes of section 413 of the Act, an application for registration of an association under Chapter 5 of the Act must be lodged with the Industrial Registrar and be accompanied by:

- (a) a list of the members of the committee of management, and of the officers, of the association, stating the full names, addresses and occupations of the persons and the offices held by them; and
- (b) 2 printed or typewritten copies of the rules of the association or such other number as the Industrial Registrar may require; and
- (c) a summary of the rules of the association in an approved form: and
- (d) a copy of the resolution of the association to apply for registration; and
- (e) any other information required by the approved form of application for registration.

Notice of application for registration

24. (1) An association which applies for registration must cause a notice of the application, in an approved form, to be published in a newspaper circulating throughout the State within 14 days after the lodging of the application.

(2) The Industrial Registrar may require the applicant to cause the notice to be published also in a local newspaper.

Objections to registration

25. (1) For the purposes of section 415 (2) of the Act, a person who objects to the registration of an association under Chapter 5 of the Act must lodge with the Industrial Registrar a notice of that objection in an approved form within 28 days after the notice of the application is duly published by the applicant for registration in a newspaper circulating throughout the State.

(2) For the purposes of section 415 (4) of the Act, a copy of the notice of objection must be served on the applicant for registration by the objector within 7 days after the original notice is lodged with the Industrial Registrar.

Issue of copy, or replacement, of certificate of registration

26. An organisation is not to be issued with a copy of, or a certificate replacing, a certificate of registration issued to it under section 420 of the Act unless the Industrial Registrar is satisfied that its certificate of registration has been defaced, lost or destroyed or that there is another good reason for its issue.

PART 3—PROVISIONS RELATING TO RULES OF ORGANISATIONS**Rules to provide for custody and affixing of seal**

27. (1) For the purposes of section 427 (1) (y) of the Act, the rules of an organisation must make provision for the custody and manner of affixing of the organisation's seal.

(2) Subject to the rules of the organisation, the seal of an organisation is to be kept by the president or other principal officer of the organisation and is to be affixed to a document only:

- (a) in the presence of at least 2 members of the committee of management of the organisation; and
- (b) with the attestation by the signatures of those members of the fact of the affixing of the seal.

Appeal to the Industrial Court

28. For the purposes of section 435 (4) of the Act, an appeal to the Industrial Court against a decision of the Industrial Registrar concerning the determination of an alteration of the rules of an organisation must be made in the manner prescribed by the rules of the Industrial Court and (subject to those rules) within 28 days after the appellant is notified of the decision.

Show cause by Industrial Registrar relating to rules

29. (1) An opportunity for an organisation to be heard for the purposes of:

- (a) section 430 (6) (b) or (7) of the Act (revocation of exemption from rules requiring elections by secret ballot and consequential alteration of rules); or
- (b) section 435 (1) of the Act (alteration of rules of organisation); or
- (c) section 440 (6) (alteration of rules of organisation),

is to be given in accordance with this clause.

(2) The Industrial Registrar must notify an organisation of the Registrar's intention to take action under section 430 (6) (b), 435 (1) or 440 (6) of the Act and allow the organisation a period of at least 14 days after the notice is given in which to show cause why the action should not be taken.

PART 4—PROVISIONS RELATING TO ELECTIONS OF OFFICERS OF ORGANISATION

Application of Part

30. (1) This Part applies to elections conducted under Division 3 of Part 3 of Chapter 5 of the Act.

(2) However, if the rules of the organisation provide under section 430 of the Act for an election otherwise than by a postal ballot, this Part is subject to those rules.

(3) Nothing in this Part limits any action or directions of the returning officer under section 444 (5) of the Act in relation to an election.

Definitions

31. (1) In this Part:

“election” means an election to which this Part applies for a particular office in an organisation;

“returning officer” means the Electoral Commissioner or:

- (a) if the Industrial Registrar has approved an independent returning officer for the election from the panel kept under section 444 (4) (b) of the Act—that independent returning officer; or
- (b) if the Industrial Registrar has approved some other person or body to conduct the election under section 446 of the Act—that other person or body.

(2) In this Part, a reference to the **secretary of an organisation** is (if the secretary is a candidate in the election concerned) a reference to another officer of the organisation nominated by the returning officer.

Panel of official returning officers (other than Electoral Commissioner)

32. (1) This clause applies to the panel of independent returning officers required to be kept by the Industrial Registrar under section 444 (4) (b) of the Act.

(2) The panel is to consist of such persons as the Industrial Registrar appoints from time to time.

(3) The persons appointed to the panel are to be persons who, in the opinion of the Industrial Registrar:

- (a) are independent of any organisation registered under Chapter 5 of the Act; and
- (b) have the requisite knowledge and experience to conduct elections for organisations in a proper and efficient manner.

(4) Appointments to the panel are to be made for a period of 2 years and may be renewed by the Industrial Registrar.

(5) The Industrial Registrar may remove a person from the panel at any time.

Notification of election to returning officer by Industrial Registrar

33. The Industrial Registrar must, as soon as practicable after authorising the conduct of an election, notify the person who is to be the returning officer of the election.

Notice of election by returning officer

34. (1) On receipt of notification of an election, the returning officer is to cause an election notice to be published in a newspaper circulating throughout the State or to be sent by post to all members of the organisation who appear to be entitled to vote in the election.

(2) The election notice is to:

- (a) state that the election is to be held by the returning officer; and
- (b) invite nominations for the election; and
- (c) advise where nomination forms may be obtained; and
- (d) fix the time and date for the close of nominations in the election; and
- (e) specify the place where nominations for the election may be lodged; and
- (f) specify the qualifications (if any) needed by candidates in the election and by a person nominating a candidate; and
- (g) fix the time and date for the close of the roll in the election; and
- (h) fix the time and date for the close of the ballot in the election.

(3) The returning officer may also cause an election notice to be published:

- (a) in a local newspaper if the registered office of the organisation is situated more than 80 kilometres from the G.P.O., Sydney; or
- (b) in the official journal of the organisation.

Time limits for election

35. (1) The dates fixed in an election notice for the close of nominations, the close of the roll and the close of the ballot in the election must, as far as is reasonably practicable, comply with the following requirements:

- (a) there is to be a period of at least 3 weeks between the date the election notice is published or posted and the date for the close of nominations;
- (b) the date for the close of the roll is to be not later than the date for the close of nominations;
- (c) there is to be a period of at least 4 weeks between the date for the close of nominations and the date for the close of the ballot.

(2) The returning officer may, by a further election notice, extend the time and date for the close of nominations, the close of the roll or the close of the ballot, if satisfied that it is necessary to do so to avoid a failure of the election.

(3) More than 1 such extension may be made in respect of an election.

Nominations

35. (1) A completed nomination for an election must contain the following information:

- (a) the full name, residential address, telephone number and date of birth of the candidate;
- (b) the full names, residential addresses and signatures of at least the required number of nominators, each of whom must be entitled to vote in the election;
- (c) the office for which the candidate is standing, along with the candidate's written consent to the nomination.

(2) A person may not nominate for election more candidates than the number of candidates to be elected.

(3) If the returning officer is of the opinion that there is an anomaly in a nomination, the returning officer must, as soon as practicable after receiving the nomination, cause written notice of that fact to be given to the candidate.

(4) For the purpose of enabling the returning officer to form an opinion of the eligibility of a candidate and the nominators, the returning officer may require the secretary of the organisation concerned to furnish the returning officer with such information regarding the candidate and nominators as the returning officer may specify. The secretary of the organisation must comply with such a requirement as soon as practicable after it is made.

(5) A nomination, and any rectification of an anomaly in the nomination, must be received by the returning officer before the time and date fixed for the close of nominations. Otherwise, the returning officer must reject the nomination.

(6) A candidate who has been nominated in an election may, by notice in writing addressed to the returning officer, withdraw the nomination at any time before the close of nominations in the election.

Uncontested elections

37. If, by the close of nominations in an election, the number of persons who have been duly nominated as candidates in the election does not exceed the number of persons to be elected, each of those persons is elected.

Contested elections

38. If, by the close of nominations in an election, the number of persons who have been duly nominated as candidates in the election exceeds the number of persons to be elected, a ballot must be held.

Candidate information sheets

39. (1) This clause applies to any election in which the returning officer determines that this clause is to apply.

(2) A candidate in an election may, at any time before the close of nominations in the election, submit to the returning officer a statutory declaration, containing information (in an approved form) intended for inclusion in a candidate information sheet.

(3) If a ballot is to be held in an election, the returning officer must draw up a candidate information sheet consisting of the information contained in the statutory declarations submitted by candidates under this clause.

(4) If the returning officer considers that the information contained in a statutory declaration submitted by a candidate:

(a) is not appropriate for inclusion in a candidate information sheet;
or

(b) is false or misleading in a material particular; or

(c) is of a length greater than that permitted by the approved form,

the returning officer may, in drawing up the candidate information sheet, omit the information, omit or rectify the particular, or reduce the length of the information, as the case requires. If practicable, the returning officer is to consult the candidate before doing so.

(5) The order of appearance of candidates' details in the candidate information sheet is to be the same order as the appearance of candidates on the ballot-paper.

Delivery of roll to returning officer

40. (1) If a ballot is to be held in an election, the returning officer must, as soon as practicable after the close of nominations, notify the secretary of the organisation that a ballot is to be held and that the secretary is required to deliver, within 7 days, a list of members entitled to vote in the election.

(2) The list is to be compiled as follows:

(a) the members are to be listed in alphabetical order of surnames and consecutively numbered; and

(b) the full surname, given names and residential address of each member is to be listed.

(3) The list is to be compiled from the membership register kept under section 501 of the Act and certified to be correct by the secretary of the organisation.

(4) The certified list constitutes the roll for the election.

(5) The certified list is to be accompanied by a label for each person included on the roll of a size suitable for affixing to an envelope, on which the name and address of each such person is shown.

(6) A candidate for election may be given a copy of the roll for the election, or may inspect the roll, but only if the candidate has been issued with a relevant certificate by the Industrial Registrar under section 501 (6) of the Act.

(7) A reference in this section to a member is, in the case of a corporation, a reference to the person who is entitled to vote on behalf of the member in the election.

Printing of ballot-papers etc.

41. (1) If a ballot is to be held in an election, the returning officer must, as soon as practicable after the close of nominations:

- (a) determine the order in which the candidates' names are to be listed on a ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the Parliamentary Electorates and Elections Act 1912; and
- (b) cause to be printed sufficient ballot-papers so that a ballot-paper may be forwarded to each person included on the roll for the election; and
- (c) if a candidate information sheet has been drawn up for the election, cause sufficient copies of it to be printed so that a copy may be forwarded to each person included on the roll.

(2) The ballot-paper for an election must contain:

- (a) the names of the candidates arranged in the order determined in accordance with subclause (1) (a), with a square opposite each name; and
- (b) if, in the opinion of the returning officer, the names of 2 or more of the candidates are so similar as to cause confusion, such other matter as will, in the opinion of the returning officer, distinguish between those candidates; and
- (c) such directions as to the manner in which the vote is to be recorded and returned to the returning officer as the returning officer considers appropriate having regard to the system of voting required by the rules of the organisation.

(3) A candidate is entitled to use only one given name on ballot-papers. A recognised abbreviation or derivative of a full given name is permitted if the candidate nominates the abbreviation or derivative on the official form of nomination and the returning officer is satisfied that it is a recognised abbreviation or derivative.

Distribution of ballot-papers

42. The returning officer must, as soon as practicable after the printing of the ballot-papers, send by post to each person included on the roll for the election:

- (a) a ballot-paper initialled or otherwise marked in such manner as the returning officer considers appropriate to verify its authenticity; and

- (b) an unsealed envelope addressed to the returning officer and bearing on the back the words “Name and address of voter” and “signature of voter”, together with appropriate spaces for the insertion of the name, address and signature, and such other information as the returning officer determines in order to identify the voter on the certified roll; and
- (c) if applicable, a candidate information sheet.

Duplicate ballot-papers

43. (1) If any person to whom a ballot-paper has been sent satisfies the returning officer by statutory declaration that the ballot-paper has been spoiled, lost or destroyed, and that the person has not already voted at the election concerned, the returning officer may, at any time before the close of the ballot, send or give to the person a new ballot-paper and envelope.

(2) The returning officer must keep a record of all such duplicate ballot-papers.

Recording of vote

44. A person on the roll for an election who wishes to vote at the election must, on receipt of a ballot-paper:

- (a) record a vote on the ballot-paper in accordance with the directions shown on it; and
- (b) place the completed ballot-paper, folded so that the vote cannot be seen, in the envelope addressed to the returning officer and forwarded with the ballot-paper; and
- (c) seal the envelope; and
- (d) complete his or her full name and address and sign the back of the envelope; and
- (e) return the envelope to the returning officer so that it will be received by the returning officer not later than the close of the ballot.

Receipt of ballot-papers

45. (1) In any ballot, the returning officer must reject any envelope purporting to contain a ballot-paper without opening the envelope or inspecting the ballot-paper if the envelope:

- (a) is not received by the returning officer before the close of the ballot; or
- (b) is unsealed.

(2) On receipt, before the close of the ballot, of an envelope purporting to contain a ballot-paper, the returning officer must examine the name on the back of the envelope and:

- (a) if the returning officer is satisfied that a person of that name is included on the roll for the election—accept the ballot-paper in that envelope for scrutiny without opening the envelope and draw a line through that person's name on the roll; or
- (b) if the returning officer is not so satisfied or if a name, address or signature does not appear on the back of the envelope, reject the ballot-paper in the envelope without opening the envelope.

(3) If it appears to the returning officer that the signature appearing on the back of an envelope is not the signature of the person whose name and address appear on the envelope, the returning officer may make such inquiries as the returning officer thinks fit. If, after making those inquiries, the returning officer is satisfied that the signature is not the signature of that person, the returning officer must reject any ballot-paper in the envelope without opening the envelope.

(4) In respect of any envelope containing voting material which is returned to the returning officer by the postal authorities as an undelivered article prior to the close of the ballot, the returning officer must immediately inform the secretary of the organisation concerned of that fact in order to find out whether a current postal address is available for the member concerned. The secretary of the organisation must immediately notify the returning officer of any such current address.

Result of ballot

46. The result of the ballot in an election is to be ascertained by the returning officer as soon as practicable after the close of the ballot.

Scrutineers

47. (I) Each candidate in a ballot is entitled to appoint, by notice in writing, scrutineers to represent the candidate at all stages of the election following the close of nominations.

(2) The maximum number of scrutineers that may be appointed by a candidate is to be determined by the returning officer.

(3) A candidate in an election is not eligible to act as a scrutineer in connection with any ballot being contested by the candidate.

Scrutiny of votes

48. (1) At the scrutiny of votes in a ballot, a ballot-paper is to be rejected as informal if:

- (a) it is not authenticated by the relevant initial or other mark; or
- (b) it has on it any mark or writing which, in the opinion of the returning officer, could enable any person to identify the voter who completed it; or
- (c) it has not been completed in accordance with the directions shown on it.

(2) A ballot-paper is not to be rejected as informal merely because there is any mark or writing on it which is not duly authorised or required (not being a mark or writing referred to in clause (1) (b)) if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper.

(3) The scrutiny of votes in a ballot is to be conducted as follows:

- (a) the returning officer is to produce the unopened envelopes containing the ballot-papers accepted for scrutiny under clause 45 (2) (a) in respect of the ballot, other than any envelope purporting to contain a ballot paper rejected under clause 45 (3);
- (b) the returning officer is then to open each such envelope, extract the ballot-paper and (without unfolding it) place it in a locked ballot box;
- (c) when the ballot-papers from all the envelopes so opened have been so placed in the ballot box, the returning officer is then to unlock the ballot box and remove the ballot-papers;
- (d) the returning officer is then to examine each ballot-paper and reject those which are informal;
- (e) the returning officer is then to proceed to count the votes and ascertain the result of the election.

(4) The returning officer is to count the votes in all ballots in the order of seniority of the office concerned. If a candidate is permitted to nominate for more than one office, a candidate who has nominated for more than one office is to be excluded from any uncounted ballots following the candidate's election to an office.

Notification of election results

49. The returning officer must, following completion of the election, give written notification to the Industrial Registrar and the secretary of the organisation concerned of the result of the election.

Death of candidate

50. If a candidate dies after the close of nominations and before the close of the ballot for an election:

- (a) the returning officer is to cause a notification of the death to be published in the same way as the election notice; and
- (b) all proceedings in the election taken after the Industrial Registrar notified the returning officer that the election was required to be held are taken to have no effect and those proceedings are again to be taken.

Decision of returning officer final

51. Any decision that the returning officer is required or permitted to make under this Part relating to the taking of a ballot in an election is final.

Costs of election

52. (1) The Returning Officer is to notify the Industrial Registrar, following the completion of an election, of all expenses incurred by the returning officer in the conduct of the election.

(2) The Industrial Registrar is to furnish to the organisation concerned a certificate setting out the amount of the expenses of the election (including relevant particulars of the items concerned) that is to be borne by the organisation in accordance with section 443 of the Act. The certificate is also to specify the person or persons to whom payment is to be made and the time within which payment is to be made.

(3) Before an election is completed, the returning officer may require the organisation to make progressive payments to the returning officer for expenses incurred by the returning officer in the election. The necessary adjustments are to be made after the completion of the election to take account of those progressive payments.

(4) If the expenses of an election are not duly paid in accordance with this clause, the persons to whom they are payable may recover them as a debt in a court of competent jurisdiction.

Application for inquiry into election

53. For the purposes of section 453 (2) (b) of the Act, an application for an inquiry into an election must be lodged with the Industrial Registrar within 6 months after the completion of the election.

**PART 5—PROVISIONS RELATING TO ACCOUNTS OF
ORGANISATIONS**

Prescribed time for lodgment of statutory declaration and copy of records under section 501 (3)

54. For the purposes of section 501 (3) of the Act, any time during the period of 3 months commencing 1 January is prescribed.

Prescribed period for lodgment of notification of change to records under section 501 (4)

55. For the purposes of section 501 (4) of the Act, in relation to the lodgment of notification of any change to the records, the period of 28 days, commencing on the day following the day on which the change is made, is prescribed.

Application for certificate to inspect membership register under section 501 (6)

56. A member of an organisation may apply to the Industrial Registrar on an approved form for a certificate under section 501 (6).

Prescribed accounts to be kept by organisations under section 508 (1) (a)

57. For the purposes of section 508 (1) (a) of the Act, each of the following accounts is prescribed in respect of each financial year of an organisation:

- (a) an account of all the income and expenditure of the organisation during the financial year, being an account that, without limiting this clause, sets out (so far as is applicable) the following particulars of income or expenditure during the financial year:
 - (i) the total amount paid to the organisation as entrance fees or periodic contributions in respect of membership of the organisation;
 - (ii) the total amount paid to the organisation by its members in respect of levies raised by the organisation or as voluntary contributions for the furtherance of particular purposes;
 - (iii) the total amount of donations or grants (other than voluntary contributions referred to in subparagraph (ii)) made to the organisation;
 - (iv) the total amount received by the organisation as interest;

- (v) the total amount received by the organisation as dividends;
- (vi) the total amount received by the organisation as income from the investment or use of any money or other assets of the organisation, other than any such income included in an amount referred to in subparagraph (iv) or (v);
- (vii) the total amount paid by the organisation as fees or periodic contributions in respect of its affiliation to any political party, any industrial or non-industrial organisation, any federation, congress, council or group of organisations or any international body having an interest in industrial matters;
- (viii) the total amount paid by the organisation in respect of levies imposed on the organisation;
- (ix) the total amount of donations or grants made by the organisation;
- (x) the total amount paid as remuneration to holders of offices in the organisation;
- (xi) the total amount paid as remuneration to employees of the organisation;
- (xii) the total amount paid as fees or allowances (other than any payment included in an amount referred to in subparagraph (x) or (xi)) to persons in respect of their attendances as representatives of the organisation at conferences or other meetings;
- (xiii) the total amount paid by the organisation in respect of audit fees, legal expenses and any other expenses incurred in respect of professional services;
- (xiv) the total amount paid by the organisation in respect of administrative expenses other than any such expenses included in an amount referred to elsewhere in this paragraph;
- (xv) the total amount set aside by the organisation as provision for payments in respect of long service leave entitlements to officers and employees of the organisation;
- (xvi) the total amount set aside by the organisation as provision for payments in respect of annual leave entitlements to officers and employees of the organisation;
- (xvii) the total amount set aside by the organisation as provision for the payment of superannuation or retirement benefits to, or paid by the organisation as contribution to a

- superannuation or retirement scheme applicable in relation to, officers or employees of the organisation;
- (xviii) the total amount paid by the organisation in respect of interest on loans to the organisation and any other expenses incurred in connection with the control or management of the assets of the organisation;
 - (xix) the total amount set aside by the organisation as provision for depreciation or amortisation on investments and fixed assets;
 - (xx) the total amount paid by the organisation in respect of penalties imposed on the organisation under the Act or this Regulation;
 - (xxi) whether there is an excess of income over expenditure or an excess of expenditure over income and, in either case, the amount of that excess;
 - (xxii) if any assets of the organisation have been sold for, or revalued at, an amount exceeding \$1,000—the amount of profit or loss (as the case may be) arising from the sale or revaluation of those assets;
 - (xxiii) if any amount (other than an amount included in an amount referred to elsewhere in this paragraph) has been transferred to a fund or account kept for a specific purpose by the organisation or any such amount has been withdrawn from such a fund or account—the total amount transferred to, or withdrawn from, that fund or account;
 - (xxiv) the net surplus or net deficit of the organisation that has been transferred to the general fund;
- (b) an account of the assets and liabilities of the organisation as at the end of the financial year, being an account that, without limiting this clause, sets out (so far as applicable) the following particulars of assets or liabilities during the financial year:
- (i) the total amount of cash in hand;
 - (ii) the total amount of cash at bank;
 - (iii) the total amount of prepayments;
 - (iv) if the accounting records of the organisation are kept on an accrual basis—the total amount of accounts receivable and the total amount of loans receivable;
 - (v) the total book value of investments in Government, municipal and other public debentures, stock or bonds;

- (vi) the total book value of investments other than those specified in subparagraph (v);
- (vii) the total book value of the fixed assets of the organisation, specifying separately the book value of any real property included in those assets and the book value of other assets;
- (viii) if the accounting records of the organisation are kept on an accrual basis—the total amount of accounts payable and the total amount of loans payable;
- (ix) the total amount held as provision for payments in respect of annual leave entitlements to officers and employees of the organisation;
- (x) the total amount held as provision for payments in respect of long service leave entitlements to officers and employees of the organisation;
- (xi) the total amount held as provision for the payment of superannuation or retirement benefits to officers and employees of the organisation;
- (xii) the total amount of contingent liabilities (other than contingent liabilities included in an amount referred to elsewhere in this paragraph), specifying separately the total amount of unsecured contingent liabilities and the total amount of contingent liabilities secured on the assets of the organisation;
- (xiii) the total amount of the balances of all funds or accounts operated by the organisation in respect of levies raised by the organisation or voluntary contributions collected from members of the organisation;
- (xiv) if money, or the balance of money, standing to the credit of a fund or account referred to in subparagraph (xiii) has been invested in any assets—the total book value of those assets;
- (xv) the total amount of the balances of all funds (other than the general fund or a fund referred to in subparagraph (xiii)) the operation of which is required by the rules of the organisation;
- (xvi) the balance of the general fund.

Prescribed accounts to be prepared under section 510 (1)

58. For the purposes of section 510 (1) of the Act, each of the following accounts is a prescribed account in respect of a financial year of an organisation:

- (a) an account of all the income and expenditure of the organisation during that financial year, being an account that, without limiting this clause, sets out (so far as is applicable) the following particulars of income and expenditure during that financial year:
- (i) the total amount paid to the organisation as entrance fees or periodic contributions in respect of membership of the organisation;
 - (ii) the total amount of grants or donations made to the organisation;
 - (iii) the total amount paid by the organisation as fees or periodic contributions in respect of its affiliation to any political party, any industrial or non-industrial organisation, any federation, congress, council or group of organisations or any international body having an interest in industrial matters;
 - (iv) the total amount paid as administrative expenses, professional fees or remuneration to holders of offices in, or to employees of, the organisation;
 - (v) the total amount of any grants or donations made by the organisation;
 - (vi) if any assets of the organisation have been sold for, or revalued at, more than \$1,000—the amount of profit or loss arising out of that sale or revaluation;
 - (vii) whether there is an excess of income over expenditure or an excess of expenditure over income and, in either case, the amount of that excess;
- (b) an account of the assets and liabilities of the organisation as at the end of that financial year, being an account that, without limiting this clause, sets out (so far as applicable) the following particulars of assets or liabilities during the financial year:
- (i) the total amount of cash in hand;
 - (ii) the total amount of cash at bank;
 - (iii) the total amount of loans made by the organisation;
 - (iv) the total book value of investments and fixed assets including, and also specifying separately, the total book value of real property and the total book value of other assets each of which is valued in excess of \$1,000;
 - (v) the total amount of loans made to the organisation;
 - (vi) the total amount of the balances of all funds the operation of which is required by the rules of the organisation;
 - (vi) the balance of the general fund.

Certificate to be given in accounts prepared under section 510

59. (1) The accounts prepared in accordance with section 510 (1) of the Act in relation to an organisation must contain:

- (a) a certificate, given by the accounting officer of the organisation, stating the number of persons that were, at the end of the financial year to which the accounts relate, members of the organisation and stating in relation to that financial year whether, in the opinion of the officer:
 - (i) the accounts show a true and fair view of the financial affairs of the organisation as at the end of the financial year; and
 - (ii) a record has been kept of all money paid by, or collected from, members of the organisation, and all money so paid or collected has been credited to the bank account or accounts to which the money is to be credited, in accordance with the rules of the organisation; and
 - (iii) before any expenditure was incurred by the organisation, approval of the incurring of the expenditure was obtained in accordance with the rules of the organisation; and
 - (iv) any payment was made out of a fund referred to in clause 57 (b) (xiii) or (xv) for a purpose other than the purpose for which the fund was operated and, if any such payment was so made, it was approved in accordance with the rules of the organisation; and
 - (v) all loans or other financial benefits granted to persons holding office in the organisation were authorised in accordance with the rules of the organisation; and
 - (vi) the register of members of the organisation was maintained in accordance with the Act; and
- (b) a certificate given by the committee of management of the organisation stating:
 - (i) whether, in the opinion of the committee of management, the accounts show a true and fair view of the financial affairs of the organisation as at the end of the financial year to which the accounts relate; and
 - (ii) whether, during the financial year to which the accounts relate, meetings of the committee of management were, in the opinion of the committee, held in accordance with the rules of the organisation; and
 - (iii) whether, to the knowledge of any member of the committee, there have been, during the financial year to which the

accounts relate, instances where records of the organisation or other documents (not being documents containing information made available to a member of the organisation under section 512 (2) of the Act), or copies of those records or other documents, or copies of the rules of the organisation, have not been furnished, or made available, to members of the organisation in accordance with the Act, this Regulation or the rules of the organisation, as the case may be; and

- (iv) whether, in relation to the report prepared in accordance with section 514 of the Act by the auditor of the organisation in respect of the financial year immediately preceding the financial year to which the accounts relate and in relation to any accounts and statements prepared in accordance with section 510 (1) of the Act to which that report relates, the organisation has complied with section 517 (1) of the Act and whichever of subsections (5) and (6) of that section of the Act is applicable.

(2) The certificate referred to in paragraph (1) (b) in relation to the accounts of an organisation:

- (a) must be in accordance with such resolution as is passed by the committee of management of the organisation in relation to the matters to be stated in the certificate; and
- (b) must be signed on behalf of the committee of management by at least 2 members of the committee.

(3) In subclause (1), “**accounting officer**”, in relation to an organisation, means the officer of the organisation responsible for the keeping of the accounting records of the organisation.

Information to be provided to members or Industrial Registrar under section 512

60. (1) For the purposes of section 512 (1) of the Act, an application to an organisation must be:

- (a) in writing addressed to the secretary, or any other executive officer, of the Organisation; and
- (b) delivered by hand, or sent by post or facsimile transmission to, the officer of the organisation.

(2) For the purposes of subsection 512 (1) of the Act, any of the following information concerning an organisation, being information relating to the financial year of the organisation in respect of which accounts and statements were last prepared in accordance with section 510 (1) of the Act, is prescribed information concerning the organisation:

- (a) in relation to any levy raised by the organisation:
 - (i) the purpose for which the levy was raised; and
 - (ii) the total amount received by the organisation;
- (b) in relation to any collection by the organisation of voluntary contributions made by the members for the furtherance of a particular purpose:
 - (i) the purpose for which the contributions were collected; and
 - (ii) the total amount received by the organisation as voluntary contributions for the furtherance of that purpose;
- (c) in relation to any donation or grant made to the organisation:
 - (i) the amount of the donation or grant; and
 - (ii) if the donation or grant was made for a specified purpose—the purpose so specified;
- (d) in relation to any levy imposed on the organisation:
 - (i) the purpose for which the levy was imposed; and
 - (ii) the total amount paid by the organisation;
- (e) in relation to any donation or grant made by the organisation:
 - (i) the purpose for which the donation or grant was made; and
 - (ii) the amount of the donation or grant; and
 - (iii) if the donation or grant is not a prescribed donation or grant—the name and address of the person to whom the donation or grant was made;
- (f) in relation to any amount received or paid by the organisation, not being an amount included in an amount referred to in a subparagraph of clause 57 (a) in relation to the organisation:
 - (i) the amount received or paid by the organisation; and
 - (ii) the name and address of the person from whom the amount was received or to whom the amount was paid; and
 - (iii) the purpose for which the amount was received or paid by the organisation;
- (g) the amount paid as remuneration to the holder of any office in the Organisation;
- (h) in relation to the sale or revaluation of any asset of the organisation, being a sale or revaluation that has resulted in a profit or loss exceeding \$1,000:
 - (i) a description of the asset sold or revalued; and
 - (ii) in the case of the revaluation of an asset—the reason for which the asset was revalued; and
 - (iii) the amount of the profit made or the loss incurred;

- (i) in relation to any loan made by the organisation:
 - (i) the amount of the loan; and
 - (ii) the purpose for which the loan was required; and
 - (iii) the security given in respect of the loan; and
 - (iv) if the loan is not a prescribed loan—the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan;
- (j) the total amount paid by the organisation in respect of investments (other than investments in Government, municipal or other public debentures, stock or bonds) made by the organisation during the financial year;
- (k) in relation to any investment (other than an investment in Government, municipal or other public debentures, stock or bonds) held by the organisation at the end of the financial year, being an investment the book value of which (as at the end of that financial year) exceeds whichever is the greater of \$1,000 and 20 per cent of the total book value of all such investments held by the organisation at the end of that financial year:
 - (i) a description of the investment; and
 - (ii) the book value of the investment as at the end of the financial year; and
 - (iii) if applicable, the quoted market value of the investment as at the end of the financial year;
- (l) in relation to any asset (other than an asset included in a class of assets referred to in a subparagraph of clause 57 (b)) held by the organisation at the end of the financial year, being an asset the book value of which exceeds \$1,000:
 - (i) a description of the asset; and
 - (ii) the book value of the asset as at the end of the financial year;
- (m) in relation to any loan received by the organisation:
 - (i) the name and address of the person from whom the loan was received; and
 - (ii) the amount of the loan; and
 - (iii) the purpose for which the loan was required; and
 - (iv) the security given in respect of the loan; and
 - (v) the arrangements made for the repayment of the loan;

- (n) in relation to any amount held by the organisation as provision for one of the following purposes:
 - (i) the payment of annual leave entitlements to its officers and employees;
 - (ii) the payment of long service leave entitlements to its officers and employees;
 - (iii) the payment of superannuation or retirement benefits to its officers and employees,
the number of officers and employees in respect of whom the amount so held constitutes provision;
- (o) in relation to any contingent liability of the organisation as at the end of the financial year, being a contingent liability the amount of which has been ascertained and exceeds 5 per cent of the net value of the assets of the organisation as at the end of the financial year:
 - (i) a description of the liability; and
 - (ii) the amount for which the organisation is liable;
- (p) in relation to any liability of the organisation (other than a liability included in a class of liabilities referred to in a subparagraph of clause 57 (b)) outstanding at the end of the financial year:
 - (i) a description of the liability; and
 - (ii) the amount for which the organisation is liable;
- (q) in relation to any fund or account operated by the organisation in respect of a levy raised by the organisation or in respect of voluntary contributions collected from the members of the organisation:
 - (i) the purpose for which the levy was raised or the voluntary contributions collected;
 - (ii) if applicable, the amount of the balance of the fund or account at the commencement of the financial year;
 - (iii) whether any money was transferred to the fund or account from any other fund or account operated by the organisation and, if any money was so transferred, a description of each fund or account from which money was so transferred and the amount transferred from each fund or account;
 - (iv) the total amount paid by the members of the organisation in respect of the levy or as voluntary contributions;
 - (v) the total amount of payments made out of the fund or account in furtherance of the purpose for which the levy was raised or the voluntary contributions collected;

- (vi) whether any payment was made out of the fund or account in furtherance of a purpose other than the purpose for which the levy was imposed or the voluntary contributions collected and, if any payment was so made, the amount of each payment and the purpose for which it was made;
- (vii) whether any money was transferred from the fund or account to any other fund or account operated by the organisation and, if any money was so transferred, a description of each fund or account to which the money was transferred and the amount transferred to each fund or account;
- (viii) in respect of each payment particulars of which are given in accordance with subparagraph (vi) and each transfer particulars of which are given in accordance with subparagraph (vii), the designation within the organisation of the person who approved the payment or transfer and the date on which the approval was given; and
- (ix) the amount of the balance of the fund or account at the end of the financial year or, in the case of a fund or account that the organisation ceased to operate before the end of the financial year, the amount of the closing balance and, if any part of that balance or closing balance has been invested in any assets, the amount so invested and a description of those assets;
- (r) in relation to any fund (other than the general fund or a fund referred to in paragraph (q)) the operation of which is required by the rules of the organisation:
 - (i) the purpose for which the fund was operated;
 - (ii) if applicable, the amount of the balance of the fund at the beginning of the financial year;
 - (iii) whether any money was transferred to the fund from any other fund or any account operated by the organisation and, if any money was so transferred, a description of each fund or account from which money was so transferred and the amount transferred from each fund or account;
 - (iv) the total amount of money, other than money referred to in subparagraph (iii), paid into the fund;
 - (v) the total amount of payments made out of the fund in furtherance of the purpose for which the fund was operated;
 - (vi) whether any payment was made out of the fund in furtherance of a purpose other than the purpose for which the fund was operated and, if any payment was so made, the

amount of each payment and the purpose for which it was made;

- (vii) whether any money was transferred from the fund to any other fund or any account operated by the organisation and, if any money was so transferred, a description of each fund or account to which the money was transferred and the amount transferred to each fund or account;
 - (viii) in respect of each payment particulars of which are given in accordance with subparagraph (vi) and each transfer particulars of which are given in accordance with subparagraph (vii), the designation within the organisation of the person who approved the payment or transfer and the date on which the approval was given; and
 - (ix) the amount of the balance of the fund at the end of the financial year or, in the case of a fund that the organisation ceased to operate before the end of the financial year, the amount of the closing balance and, if any part of that balance or closing balance has been invested in any assets, the amount so invested and a description of those assets.
- (3) In subclause (2):
- (a) a reference to a person includes a reference to any body whether corporate or unincorporated; and
 - (b) a reference to a prescribed donation or grant, or a prescribed loan, is a reference to a donation, grant or loan made or granted by an organisation to a member of the organisation on the certification of the officer of the organisation authorising the donation, grant or loan that the officer was satisfied, from investigations made by the officer, that the donation, grant or loan was necessary to relieve the member or a dependant of the member from severe financial hardship.
- (4) Any information that is required to be made available to a member of an organisation, or to the Industrial Registrar, under section 512 (2) of the Act:
- (a) must be in writing signed by the secretary, or any other executive officer, of the organisation; and
 - (b) must:
 - (i) if the application was made by the Industrial Registrar—be delivered by hand at, or sent by post to, the office of the Industrial Registrar; or
 - (ii) if the application was made by a member of the organisation and specifies an address in relation to the member—be sent by post to that address; or

- (iii) in any other case—be left for collection at the office of the organisation.
- (5) For the purposes of subsection 512 (2) of the Act, the prescribed time is:
- (a) in relation to an application made under subsection 512 (1) of the Act by a member of an organisation:
 - (i) except if subparagraph (ii) applies—28 days after the day of receipt of the application for the information; or
 - (ii) if, on an application by the secretary, or any other executive officer, of the organisation (whether before or after the end of the period referred to in subparagraph (i)), the Industrial Registrar certifies that he or she is satisfied that, for reasons outside the control of the organisation, it was, or is, not practicable for the organisation to make the information available to the member within that period—6 weeks after the day of receipt of the application for the information; or
 - (b) in relation to an application made under section 512 (1) of the Act by the Industrial Registrar—28 days after the day of receipt of the application for the information.

Prescribed period for making auditor’s report under section 514

61. For the purposes of section 514 (1) of the Act, the prescribed period for the making of a report by the auditor of an organisation is:
- (a) except where paragraph (b) applies—6 months; or
 - (b) if, on the application made by an auditor (whether before or after the expiration of the period referred to in paragraph (a)), the Industrial Registrar certifies that he or she is satisfied that, for reasons outside the control of the auditor, it was, or is, not practicable for the auditor to complete that report within that period—8 months.

Prescribed period for supply to members of reports and audited accounts under section 517

62. For the purposes of section 517 (3) of the Act, the prescribed period is 56 days after the making by the organisation of the report concerned.

Prescribed period for presentation to general meeting of reports and audited accounts under section 517

63. For the purposes of section 517 (5) (a) of the Act, the prescribed period is the period starting on the eighth day after the report, accounts

and statements are (or the summary referred to in section 517 (2) of the Act is) supplied to members and ending 28 days (or such longer period as the Industrial Registrar allows) after the period referred to in section 517 (3) of the Act.

Prescribed period for lodging reports with Industrial Registrar

64. For the purposes of section 518 (1) of the Act, the prescribed period is 14 days after the relevant meeting.

Prescribed officer for providing certificate under section 518 (1) (b)

65. If the rules of an organisation provide that the certificate referred to in section 518 (1) (b) of the Act is to be signed by an officer of the organisation other than the secretary, that officer is a prescribed officer for the purposes of that paragraph.

PART 6—PROVISIONS RELATING TO AMALGAMATIONS

Federations

66. (1) An application under section 527 (1) of the Act must be in an approved form and be accompanied by a copy of

- (a) the proposed rules; or
- (b) the agreement relating to powers and functions,

of the proposed federation in respect of which the application is lodged.

(2) For the purposes of section 527 (2) (b) of the Act, the following particulars are prescribed in relation to an application for recognition as a federation:

- (a) the name of the proposed federation;
- (b) the names of its constituent organisations;
- (c) the postal address or address for service;
- (d) the names of its proposed officers.

(3) For the purposes of section 527 (3) of the Act, the period of 3 years is prescribed.

(4) For the purposes of section 527 (4) of the Act, the following details are prescribed:

- (a) the federations' name;
- (b) the names of its constituent organisations.

(5) If, in accordance with section 527 (7) of the Act, a federation varies its composition, the Industrial Registrar must enter particulars of the variation in the register kept under section 420 (1) of the Act.

(6) For the purposes of section 527 (8) (b) of the Act, the period of 3 years is prescribed.

(7) For the purposes of section 527 (8) (c) of the Act, the following persons are prescribed:

- (a) the Minister;
- (b) a person or organisation interested in making the relevant application under that paragraph.

(8) If, after a federation has become registered under section 527 of the Act, there is any change in relation to:

- (a) any particular, in respect of the federation, of a kind specified in subclause (2); or
- (b) the federation's rules; or
- (c) the agreement relating to the federation's powers and functions,

the federation must, within 28 days, give a statement to the Industrial Registrar setting out full particulars of the change.

(9) A federation that fails, without reasonable excuse, to lodge a statement in compliance with subclause (8) is guilty of an offence.

Maximum penalty: 10 penalty units.

Application for a community of interest declaration

67. An application under section 532 (1) of the Act must be in an approved form and must:

- (a) specify the grounds on which it is made; and
- (b) be signed by an authorised officer of each organisation lodging it.

Application for approval for submission of amalgamation to ballot

68. (1) An application under section 533 (1) of the Act must be in an approved form and must:

- (a) specify one of the applicants as the applicant authorised to receive, on behalf of the applicants, service of
 - (i) documents in relation to the application or to the proposed amalgamation; and
 - (ii) documents in relation to each proposed alternative amalgamation; and

- (b) be signed by an authorised officer of each applicant lodging it; and
- (c) be accompanied by a copy, signed by an authorised officer of the applicant whose committee of management passed it, of each resolution under section 531 (1) relating to the proposed amalgamation.

(2) Service of a document referred to in subclause (1) (a) on the applicant specified for the purposes of that subclause is taken to be service on each of the applicants.

(3) If the proposed amalgamation to which the application relates or any alternative provision of that proposed amalgamation involves the registration of an association as an organisation, there must be lodged with the application copies, each of which is signed by an authorised officer of each organisation lodging it, of documents relating to the association that are documents of a kind required for an application for registration as an industrial organisation or a non-industrial organisation under the Act.

Application for exemption from ballot

69. An application under section 535 (1) of the Act must be in an approved form and must:

- (a) specify the grounds on which it is made; and
- (b) be signed by an authorised officer of the organisation lodging it.

Application for ballot not conducted under section 553

70. An application under section 536 (1) of the Act must be in an approved form and must:

- (a) set out, or be accompanied by, a proposal that:
 - (i) is of a kind referred to in that subsection; and
 - (ii) complies with section 552 (b) of the Act; and
- (b) be signed by an authorised officer of the organisation lodging it.

Withdrawal of applications lodged under sections 532, 533, 535 and 536

71. (1) A party to an application under section 532 (1) or 533 (1) of the Act may lodge with the Industrial Registrar a notice of withdrawal of the application.

(2) The parties to an application under section 532 (1) or 533 (1) of the Act may jointly lodge with the Industrial Registrar a notice of withdrawal of the application.

(3) A party to an application under section 535 (1) or 536 (1) of the Act may lodge with the Industrial Registrar a notice of withdrawal of the application.

(4) Each party to the lodgment of a notice of withdrawal must lodge with the notice a statement, signed by an authorised officer of that party, that the committee of management of that party has passed a resolution approving the proposed withdrawal.

(5) If a notice is lodged under subclause (1), the Industrial Registrar must take such steps as he or she thinks necessary to ensure that the notice is brought to the attention of the organisations, associations and persons likely to be affected by the withdrawal.

Lodging “yes” case under section 537

72. A statement under section 537 of the Act must be lodged with the Industrial Registrar.

Prescribed matters concerning submissions at amalgamation hearings

73. For the purposes of section 542 (3) of the Act, the following matters are prescribed:

- (a) any proposed alteration in the name of an existing organisation concerned in the proposed amalgamation;
- (b) any proposed alterations of the eligibility rules of an existing organisation concerned in the proposed amalgamation.

Public notification of refusal to approve the submission of an amalgamation to ballot

74. (1) If, under section 543 (2) of the Act, the Industrial Registrar has refused to approve the submission of an amalgamation to ballot, the Industrial Registrar must cause a notice of the refusal to be published in one or more newspapers so that, in the Industrial Registrar’s opinion, the notice is likely to come to the attention of persons likely to be affected by the proposed amalgamation.

(2) The form and content of the notice are matters for the Industrial Registrar’s discretion, but the notice must:

- (a) specify the prescribed grounds on which an objection to a matter involved in a proposed amalgamation may be made under section 544 of the Act; and
- (b) state that any such objection must be lodged by a specified date, being the date by which, under clause 75, such an objection must be lodged.

Time for lodging an objection under section 544

75. An objection under section 544 of the Act must be lodged:

- (a) by the date that the Industrial Registrar fixes; or
- (b) by any later date that the Industrial Registrar may substitute; or
- (c) if no date is fixed by the Industrial Registrar, within 28 days of the date of publication (or, if there is more than one such date, the first date of publication) of a notice under clause 74 in relation to the relevant proposed amalgamation.

Manner of making objections to amalgamation involving extension of eligibility rules etc. under section 544

76. (1) An objection under section 544 of the Act must be made by lodging with the Industrial Registrar, within the time prescribed by clause 75, a notice of objection that:

- (a) shows the name and address of the person making the objection; and
- (b) specifies the grounds of the objection; and
- (c) sets out particulars of those grounds.

(2) A notice of objection lodged by an organisation must be under the seal of the organisation or be signed by an authorised officer of the organisation.

Prescribed persons who may make objections under section 54

77. For the purposes of section 544 (3) of the Act, any person or organisation interested in a proposed amalgamation is a prescribed person in relation to an objection to the amalgamation.

Prescribed grounds on which objection may be made under section 544

78. For the purposes of section 544 (3) of the Act, each of the following grounds is a prescribed ground in relation to an objection to a proposed amalgamation:

- (a) if the amalgamation involves the registration of an association as an organisation:
 - (i) that the registration of the association would not further the objects of the Act;
 - (ii) that there is an organisation to which the members of the association may conveniently belong;
 - (iii) that the name of the association is the same as that of an organisation or is so similar to the name of an organisation as to be likely to cause confusion;
 - (iv) that the association is not a genuine association of a kind referred to in Part 2 of Chapter 5 of the Act;
 - (v) that the association does not meet (or, if the amalgamation takes effect, will not meet) the requirements for registration under the Act:
- (b) if the proposed amalgamation involves a change in the name of an organisation—that the proposed new name of the organisation is the same as that of another organisation or is so similar to the name of another organisation as to be likely to cause confusion;
- (c) if the proposed amalgamation involves a widening of the eligibility rules of an existing organisation—that there is another organisation to which persons who:
 - (i) are potential members of the amalgamating organisation; and
 - (ii) would be ineligible to join any of the amalgamating organisations if the rules of those organisations were not widened,might conveniently belong.

Service of notice of objection

79. A person or organisation lodging a notice of objection referred to in clause 75 must serve a copy of it, within 7 days of the lodgment, on the relevant applicant that is specified for the purposes of clause 68 (1) (a).

Statement in reply

80. (1) If a copy of a notice of objection has been served under clause 79, the relevant applicants may jointly lodge in the Industrial Registry a statement, signed by authorised officers of each applicant organisation or association, that sets out the facts relied on in answer to the objection.

(2) A statement under subclause (1) must be lodged not later than 14 days after service under clause 79 of the copy of the notice of objection to which the statement in reply relates.

(3) The applicants who have lodged a statement under subclause (1) must serve a copy of it, within 7 days of the lodgment, on each party to the notice of objection.

Definition of “ballot”

81. In clauses 82–100, “**ballot**” means a ballot conducted under Division 9 of Part 3 of Chapter 5 of the Act.

Roll of voters—preparation

82. For the purposes of section 547 of the Act, the roll of voters for a ballot of the members of an organisation must:

- (a) be prepared at the direction of the electoral official conducting the ballot; and
- (b) set out opposite the name of each person on the roll the postal address of that person; and
- (c) be completed not later than 14 days before the commencing day of the ballot.

Roll of voters—inspection

83. (1) An electoral official conducting a ballot of the members of an organisation must cause the roll of voters for the ballot to be available, during the period specified in relation to the ballot by subclause (3), for inspection and copying in accordance with subclause (2), during ordinary hours of business at the place at which the official carries out his or her duties in relation to the ballot.

(2) Members of the organisation and any other person so authorised by the electoral official conducting the ballot are entitled:

- (a) to inspect the roll of voters for the ballot; and
- (b) to take copies of the roll or of parts of the roll,

at the times and place referred to in subclause (1) but only for the purposes of the ballot.

(3) For the purposes of subclause (1), the period specified in relation to a ballot is the period that:

- (a) commences on the day immediately following the day on which the preparation of the roll of voters for the ballot is completed; and
- (b) ends 30 days after the declaration of the result of the ballot.

Form and publication of notice of ballot

84. (1) If the Industrial Registrar or the Full Commission has fixed under section 546 of the Act the commencing day and the closing day of the ballot on a proposed amalgamation, the electoral official conducting the ballot must cause a notice of the fixing of the days to be given to the members entitled to vote at the ballot.

(2) The electoral official may, at his or her discretion, cause the notice to be given by post, by newspaper advertisement or by such other reasonable means as the electoral official thinks necessary to ensure that the notice is brought to the attention of the members entitled to vote at the ballot.

Conduct of ballot

85. (1) Subject to the Act and this Regulation, the electoral official conducting a ballot of members of an organisation may take action and give any direction that he or she reasonably considers to be necessary for ensuring that no unlawful disclosure or other irregularity occurs in relation to the ballot.

(2) A person must not, without reasonable excuse, refuse or fail to comply with any such direction.

Maximum penalty: 10 penalty units.

Scheme for amalgamation—Industrial Registrar to supply copies of documents

86. If an organisation has applied for approval for the submission of an amalgamation to ballot, the Industrial Registrar must promptly supply to the Electoral Commissioner:

- (a) a copy of the scheme for amalgamation that was lodged with the application; and
- (b) a copy of the outline of the scheme of amalgamation lodged under section 550 of the Act; and
- (c) a copy of each statement lodged under section 537 or 548 of the Act in relation to the proposed amalgamation; and

- (d) a copy of each amendment of, or document lodged in substitution for, a document referred to in paragraph (a), (b) or (c).

Scheme for amalgamation—electoral official to supply copies of documents on request

87. If

- (a) the Electoral Commissioner has received one or more documents under clause 86 (a) or (b); and
- (b) a person entitled to vote at the ballot makes a written or oral request to the official for a copy of the document or of any of the documents,

the electoral official conducting the ballot must promptly supply to the person that copy or those copies without charge.

Ballot not conducted under section 553—electoral official to fix commencement and closing times, and provide information and material to persons entitled to vote

88. (1) Where the Industrial Registrar or the Full Commission member approves, under section 552 of the Act, a proposal for submission of a proposed amalgamation to a ballot that is not conducted under section 553 of the Act, an electoral official must:

- (a) fix the places, and the times of commencement and closing, of the meetings of members at which the ballot on the proposal will be conducted; and
- (b) include in the notice given under clause 84 in relation to the ballot details of
 - (i) the places and times so fixed: and
 - (ii) the procedure for obtaining and exercising an absentee vote in relation to the ballot; and
- (c) post to each person entitled to vote at the ballot, at the postal address of the person shown on the roll of voters:
 - (i) a copy of the latest version (incorporating all subsequent amendments) of the outline of the relevant scheme for amalgamation lodged under section 533 (2) (b) of the Act; and
 - (ii) copies of the latest version (incorporating all subsequent amendments) of each statement lodged under section 537 (1) or 548 (2) of the Act; and
 - (iii) notification of the entitlement of the person to obtain a copy of the relevant scheme for amalgamation lodged under

section 533 (2) (a) of the Act, or, where appropriate, of that scheme as amended or substituted, together with particulars of the place where, and the means by which, that copy may be obtained.

(2) Documents required to be posted under subclause (1) must be posted in sufficient time for them to be delivered, in the ordinary course of post, at least 7 days before the relevant commencing day.

Ballot-papers—forms

89. The ballot-papers for use in a ballot of the members of an organisation in respect of the proposed amalgamation must be in accordance with the form approved by the Electoral Commissioner.

Issuing of ballot-papers—attendance voting

90. In respect of a ballot of the kind referred to in section 552 of the Act, an electoral official must issue to each person entitled to vote at the ballot a ballot-paper or multiple ballot-paper, as the case requires, that bears:

- (a) the initials of the electoral official; or
- (b) a facsimile of those initials.

Dispatch of ballot-papers—secret postal ballots

91. As soon as practicable, but not earlier than 2 days before the commencing day of a ballot or ballots of the kind referred to in section 553 of the Act, an electoral official must send to each person entitled to vote at the ballot a sealed envelope, addressed to the postal address of the person shown on the roll of voters, containing:

- (a) one ballot-paper or multiple ballot-paper, as the case requires, for the ballot that bears:
 - (i) the initials of the electoral official; or
 - (ii) a facsimile of those initials; and
- (b) any document that the Act requires to be sent with the ballot-paper; and
- (c) any other material that the electoral official considers to be relevant to the ballot; and
- (d) an envelope, addressed to the electoral official, that may be posted without cost to the voter; and

- (e) details of the place where the person may obtain a copy of the relevant scheme for amalgamation lodged under section 533 (2) (a) of the Act or, where appropriate, of that scheme as amended or of a subsequent scheme.

Duplicate ballot-papers—attendance voting

92. If a voter at a ballot of the kind referred to in section 552 of the Act satisfies the presiding electoral official, before depositing the ballot-paper or multiple ballot-paper in the ballot box, that the voter has accidentally spoiled the paper, the official must:

- (a) mark “spoilt” on the paper; and
- (b) initial the paper where so marked and retain it; and
- (c) issue a fresh ballot-paper or multiple ballot-paper, as the case requires, to the voter.

Duplicate ballot-paper etc.—postal voting

93. (1) If, on the application in writing of a person in accordance with subclause (2), an electoral official is satisfied that:

- (a) a ballot-paper or multiple ballot-paper; or
- (b) another document required to accompany a ballot-paper or ballot-papers,

that was posted to the person in accordance with clause 91 or for the purposes of section 552 (b) (vi) of the Act:

- (c) has not been received by the person; or
- (d) has been lost or destroyed; or
- (e) in the case of a ballot-paper or multiple ballot-paper, has been spoiled,

the electoral official must promptly issue a duplicate of the relevant document to the person.

(2) An application under subclause (1) must:

- (a) be received by the official on or before the closing day of the ballot; and
- (b) set out the grounds on which the application is made; and
- (c) where practicable, be substantiated by evidence that verifies, or tends to verify, those grounds; and
- (d) contain a declaration to the effect that the person has not voted at the ballot; and
- (e) in a case mentioned in subclause (1) (e), be accompanied by that paper.

(3) An electoral official to whom a spoilt paper is returned in accordance with subclause (2) (e) must deal with the paper in the manner specified in clause 92 (a) and (b).

Manner of voting

94. A person voting at a ballot of the members of an organisation in respect of a proposed amalgamation or proposed alternative amalgamation must record his or her vote on the ballot-paper in the manner directed on the ballot-paper.

Scrutiny

95. (1) The electoral official conducting a ballot must ascertain the result of the ballot or ballots by conducting a scrutiny in accordance with this regulation.

(2) As soon as practicable after the close of the ballot, the electoral official must:

- (a) admit the valid votes and reject the informal votes; and
- (b) count the valid votes, and record the number:
 - (i) in favour of the proposal; and
 - (ii) against the proposal; and
- (c) count the informal votes.

(3) In the case of a scheme for amalgamation that contains a proposed alternative provision, if the electoral official is satisfied that the result of the ballot on that provision may be required to be known for the purposes of the Act he or she must:

- (a) admit the valid votes, and reject the informal votes, on that provision; and
- (b) count the valid votes, and record the number:
 - (i) in favour of that provision; and
 - (ii) against that provision; and
- (c) count the informal votes on that provision.

(4) Subject to subclause (5), a vote is informal only if:

- (a) the ballot-paper does not bear:
 - (i) the initials of an electoral official; or
 - (ii) a facsimile of those initials; or
- (b) the ballot-paper is marked in a way that permits the voter to be identified; or

(c) the ballot-paper is not marked in a way that makes it clear how the voter meant to vote.

(5) A vote is not informal by reason of subclause (4) (a) if the electoral official is satisfied that the ballot-paper in question is authentic.

(6) If the electoral official conducting the ballot is informed by a scrutineer that the scrutineer objects to a ballot-paper being admitted as formal or rejected as informal, as the case may be, the official must:

- (a) decide whether the ballot-paper is to be admitted as formal or rejected as informal; and
- (b) must endorse that decision on the ballot-paper and initial the endorsement.

Scrutineers

96. (1) In relation to a ballot of the members of an organisation on a proposed amalgamation, the committee of management of the organisation may appoint members as scrutineers to safeguard the interests of the members who approve of the amalgamation.

(2) An appointment under subclause (1) must be made by an instrument signed on behalf of the committee of management by an authorised officer of the organisation.

(3) If members of an organisation have lodged, under section 548 (2) of the Act, a written statement in opposition to the proposed amalgamation or any proposed alternative amalgamation, the electoral official conducting the ballot must allow members of the organisation, being persons who appear to the official to represent the first-mentioned members, to be scrutineers in relation to the ballot to safeguard the interests of members who disapprove of the amalgamation.

(4) At any time during the period of scrutiny:

- (a) the number of scrutineers appointed under subclause (1) and in attendance at the scrutiny; and
- (b) the number of scrutineers referred to in subclause (3) and in attendance at the scrutiny,

must not, in either case, exceed the number determined by the electoral official conducting the ballot.

Certificate showing particulars of the ballot

97. (1) Not later than 14 days after the closing day of a ballot, the electoral official conducting the ballot must prepare, date and sign a certificate showing, in relation to the ballot:

- (a) the total number of persons on the roll of voters; and
- (b) the total number of ballot-papers issued; and
- (c) where applicable, the total number of envelopes containing ballot-papers posted by the official that were returned undelivered to the official by the closing date of the ballot; and
- (d) the total number of ballot-papers received by the official; and
- (e) the total number of votes in favour of the question set out on the ballot-paper; and
- (f) the total number of votes not in favour of the question set out on the ballot-paper; and
- (g) the total number of informal ballot-papers.

(2) Subclause (1) does not apply in relation to a ballot that was conducted under section 553 (2) of the Act, if by reason of section 553 (4) of the Act the electoral official conducting the ballot did not count the votes in the ballot.

(3) Immediately after signing a certificate referred to in subclause (1) in relation to a ballot, the electoral official must:

- (a) send or deliver the certificate to the Industrial Registrar; and
- (b) send or deliver a copy of the certificate to each of the organisations concerned in the proposed amalgamation.

Preservation of ballot-papers etc.

98. The Electoral Commissioner must retain all ballot-papers and documents relating to a ballot:

- (a) until the end of the period within which application may be made under section 556 of the Act for an inquiry into the ballot; or
- (b) if any such application is made—until the application has been disposed of.

Costs of ballot

99. (1) The Electoral Commissioner is to notify the Industrial Registrar, following the completion of a ballot, of all expenses incurred by the Electoral Commissioner in the conduct of the ballot.

(2) The Industrial Registrar is to furnish to the organisations and associations concerned a certificate setting out the amount of the expenses of the ballot (including relevant particulars of the items concerned) that is to be borne by the organisations and associations in accordance with section 558 of the Act. The certificate is also to specify

the person or persons to whom payment is to be made and the time within which payment is to be made.

(3) Before a ballot is completed, the Electoral Commissioner may require the organisations and associations to make progressive payments to the Electoral Commissioner for expenses incurred by the Electoral Commissioner in the ballot. The necessary adjustments are to be made after the completion of the ballot to take account of those progressive payments.

(4) If the expenses of a ballot are not duly paid in accordance with this clause, the persons to whom they are payable may recover them as a debt in a court of competent jurisdiction.

Inquiry into ballot irregularity—application

100. (1) An application to the Industrial Court under section 556 (1) of the Act for an inquiry into a ballot is to be lodged with the Registrar of the Industrial Court in accordance with rules of court.

(2) If an inquiry is instituted, the Industrial Court may authorise any person to inspect rolls of voters, ballot-papers or other documents relating to the ballot.

(3) The Industrial Court may allow any person to appear or be represented at an inquiry.

(4) Subject to the Act and this Regulation:

- (a) the procedure of the Industrial Court at an inquiry is within the discretion of the Court; and
- (b) the Industrial Court is not bound, in conducting the inquiry, to act in a formal manner or to apply any rules of evidence, but may inform itself of any matter in any manner as it thinks fit.

Public notification of amalgamation day

101. (1) For the purposes of section 559 (2) of the Act, the notice fixing a day as the day on which the amalgamation is to take effect must be published in one or more newspapers so that, in the Industrial Registrar's opinion, the notice is likely to come to the attention of interested persons, including the members of the organisations, and any associations, to be amalgamated.

(2) A notice published in accordance with this clause is taken to be a notice published by the Industrial Registrar for the purposes of section 559 (2) of the Act.

Prescribed particulars concerning registration of amalgamated organisations

102. For the purposes of section 559 (3) (a) of the Act, the following particulars in relation to a proposed amalgamated organisation are prescribed:

- (a) the name of the proposed organisation;
- (b) the rules of the proposed organisation relating to eligibility for membership;
- (c) if the proposed organisation is registered in relation to a particular industry—a description of that industry.

Notification of decisions, ballots etc.—additional means may be used

103. A requirement in this Part for a person to give notice, or to publish notice, of a matter in a specified manner does not preclude that person from giving or publishing additional notice of the matter by other reasonable means.

PART 7—PROVISIONS RELATING TO SUSPENSION AND CANCELLATION OF REGISTRATION OF ORGANISATIONS**Prescribed period to show cause why registration as organisation should not be cancelled**

104. For the purposes of section 589 (2) of the Act, the prescribed period within which an organisation has the opportunity to show cause why its registration as an organisation should not be cancelled is within 14 days after it has been notified that the Industrial Court considers it appropriate to cancel its registration as an organisation or within such longer period as the Industrial Court considers reasonable in the circumstances.

Winding up of organisations—modifications of applied provisions of Corporations Law

105. For the purposes of section 596 (3) of the Act, in addition to any other necessary modifications of the provisions of Parts 5.5 and 5.7 of the Corporations Law as applied to the winding up of the affairs of an organisation, those provisions are modified as follows:

- (a) a reference to a company is to be read as if it were a reference to an industrial organisation or a non-industrial organisation that, before the cancellation of its registration, was registered as such under Part 2 of Chapter 5 of the Act; and

- (b) a reference to the Commission is to be read as if it were a reference to the Industrial Registrar; and
- (c) a reference to the Court is to be read as if it were a reference to the Industrial Court; and
- (d) a reference to directors is to be read as if it were a reference to the committee of management of an industrial organisation or a non-industrial organisation and a reference to a director is to be read as if it were a reference to a member of such a committee of management; and
- (e) a reference to a liquidator is to be read as if it were a reference to a liquidator appointed by the Industrial Court; and
- (f) a reference to a Part 5.7 body is to be read as if it were a reference to an industrial organisation or a non-industrial organisation that, before the cancellation of its registration, was registered as such under Part 2 of Chapter 5 of the Act.

Notice of decision of Industrial Court to dispense with winding up

106. For the purposes of section 596 (5) of the Act, if the Industrial Court dispenses with the winding up of an organisation, the prescribed manner of giving notice of that decision is by the publication of the notice in the Gazette and in a newspaper circulating throughout the State.

PART 8—OTHER PROVISIONS RELATING TO RECOGNISED ORGANISATIONS

Manner of confirmation of registration of continued recognised organisation

107. For the purposes of sections 621 and 646 of the Act, the registration of an organisation is to be confirmed by an appropriate entry in the register kept under section 420 of the Act and by the issue of a certificate of registration under that section.

Application to recognised organisations of provisions of Part 3 of Chapter 5 of Act—general

108. (1) Pursuant to section 623 of the Act, the provisions of Part 3 of Chapter 5 of the Act apply to and in respect of a continued incorporated industrial organisation, subject to the following modifications:

- (a) any provision which cannot be complied with without contravening the Act under which the organisation is incorporated does not apply;

- (b) a reference to the rules of an organisation is to be read as a reference to the memorandum and articles of association or other rules of the organisation (as referred to in section 622 of the Act);
- (c) Division 9 (Amalgamation) and Division 11 (Suspension and cancellation of registration) of Part 3 of Chapter 5 of the Act do not apply;
- (d) any accounts which are kept in accordance with the Act under which the organisation is incorporated and which substantially comply with the requirements of the Act and this Regulation are taken to comply with those requirements.

(2) Pursuant to section 649 of the Act, the provisions of Part 3 of Chapter 5 of the Act apply to and in respect of a continued unincorporated industrial organisation or a continued non-industrial organisation until its registration is confirmed under Part 2 of that Chapter, subject to the following modifications:

- (a) any provision which cannot be complied with without contravening the Trade Union Act 1881 does not apply;
- (b) any accounts which are kept in accordance with the Trade Union Act 1881 and which substantially comply with the requirements of the Act and this Regulation are taken to comply with those requirements.

(3) The Industrial Registrar may approve of any necessary adjustment to the rules of an organisation to which this clause applies for the purposes of any provision of Part 3 of Chapter 5 of the Act that is applied to the organisation by this clause, but only until the registration of the organisation under Part 2 of that Chapter is confirmed.

Prescribed period to show cause why recognition of registration should not be cancelled

109. For the purposes of section 631 (2) of the Act, the prescribed period within which an organisation has the opportunity to show cause why its recognition should not be cancelled is within 14 days after it has been notified that the Industrial Court considers it appropriate to cancel its recognition or within such longer period as the Industrial Court considers reasonable in the circumstances.

Extension of term of office of officials of recognised organisations

110. An extension of the term of office of a person referred to in section 650 (2) of the Act may be granted by the Industrial Registrar on application, in the form approved by the Industrial Registrar, made by the person or the organisation concerned.

**CHAPTER 6—PROVISIONS RELATING TO PUBLIC
VEHICLES AND CARRIERS****Publication of application for registration of association of contract
drivers or carriers**

111. Notice of an application under section 666 of the Act is to be published in a newspaper circulating throughout New South Wales within 14 days after the lodging of the application.

**Objection against registration of association of contract drivers or
carriers**

112. For the purposes of section 667 of the Act, a person who objects to the granting of an application under section 666 of the Act must serve the notice of objection on the Industrial Registrar within 28 days after the notice of the application is duly published by the Industrial Registrar in a newspaper circulating throughout the State.

Withdrawal of registration of associations at request of members

113. (1) An application for a certificate of withdrawal of registration of an association under section 669 of the Act:

- (a) is to be made to the Industrial Registrar in the form approved by the Industrial Registrar; and
- (b) is to be signed by a majority of the members of the governing body of the association or by a majority of the members of the association; and
- (c) is not to be made until the applicants have given at least 14 days' written notice of their intention to apply for the certificate to all financial members of the association at their last known places of residence or business.

(2) An application for such a certificate may not be made if:

- (a) it is contrary to the rules of the association; or
- (b) proceedings have been duly instituted within the association to prevent the making of the application.

**CHAPTER 7—PROVISIONS RELATING TO PRIVATE
EMPLOYMENT AGENTS****Application fee for licence as private employment agent**

114. For the purposes of section 705 (1) (c) of the Act, the fee that must accompany an application for a licence under Chapter 7 of the Act is \$40.

Annual fee for continuation of licence as private employment agent

115. For the purposes of section 709 (2) (b) of the Act, the annual fee that must be paid for the continuation of a licence under Chapter 7 of the Act is \$40.

Notice of appeal to Local Court against refusal or cancellation of licence

116. A notice of appeal under section 714 of the Act to a Local Court is to be lodged with the Clerk of that Court.

CHAPTER 8—MISCELLANEOUS PROVISIONS**Approved forms—Industrial Registrar**

117. The following documents are to be in the form approved by, and are to be lodged with, the Industrial Registrar:

- Application for registration of enterprise agreement (section 126 (1) of Act)
- Application for secret ballot (section 225 (2) of Act)
- Nomination as member or deputy of Conciliation Committee (sections 329 (2) and 333 (1) of Act)
- Nomination as member or deputy of Contract Regulation Committee (sections 331 (1) and 333 (1) of Act)
- Application for Industrial Registrar to arrange conduct of election of office in organisation (section 444 (1) of Act)
- Application for approval for person or body other than official returning officer to conduct elections (section 446 (1) of Act)
- Notice of registered office of organisation (section 604 of Act)
- Oath of member of Conciliation Committee or Contract Regulation Committee (section 749 (2) (i) of Act)

Application for revocation of authority to enter workplaces

118. For the purpose of section 733 (4) (c) of the Act, an application to the Industrial Registrar for the revocation of an authority under section 733 is to be made in an approved form, setting out the grounds on which the application is made.

Exhibition of awards

119. (1) An employer of employees whose conditions of employment at any premises are affected by an award must cause a copy of the award to be exhibited at those premises.

(2) It is sufficient compliance with subclause (1) if the latest reprint of the award is exhibited.

Maximum penalty: 5 penalty units.

Penalty notices

120. For the purposes of section 739 of the Act, offences against the following provisions of the Act are prescribed offences and 1 penalty unit is the prescribed amount of penalty for each such offence:

- section 182 (4)
- section 183 (1) or (2)
- section 719 (except subsection (5))
- section 731 (1) (d), (e), (f) or (g).

Additional classes of persons deemed to be employees

121. (1) The following classes of persons are (pursuant to clause 1 (h) of Schedule 1 to the Act) taken to be employees:

- (a) any person (other than the owner or, where the owner is not occupying the building or premises, the occupier of any building or premises or a bona fide contractor employing labour for that purpose) who performs the work of plumbing, draining, plastering, fibrous plaster fixing or fixing of gypsum plaster board on any building or premises the erection, construction, repair, alteration or maintenance of which is being carried out under a contract between the owner or occupier and a contractor. (In such a case, the last-mentioned contractor is taken to be the employer. This provision does not apply to work of repair, alteration or maintenance of existing premises used as residences.);
- (b) any person (not being a bona fide contractor employing labour for that purpose) who, as a trade or occupation, performs the work of fitting blinds in or on a building (including the work of taking measurements for blinds, or of assembling or selling blinds, in connection with their fitting) if the blinds or component parts have been supplied to the person by the manufacturer or a distributor of the blinds or components under an agreement for their supply for the purpose of being fitted by the person in the course of his or her trade or occupation. (In such a case, the manufacturer or distributor is taken to be the employer.);

- (c) any person who performs the work of managing or supervising public baths under the care and control of the council of a city, municipality or shire pursuant to a contract, lease, licence or other arrangement with the council. (In such a case, the council is taken to be the employer.);
 - (d) any person who owns or hires a vehicle and drives the vehicle when it is being used for the carriage of ready-mixed concrete (or of materials to be made into ready-mixed concrete on the vehicle) if the concrete or materials have been supplied to the person for their delivery by a manufacturer who carries on the business of manufacturing, supplying or distributing ready-mixed concrete. (In such a case, the manufacturer is taken to be the employer.);
 - (e) any person (other than an excluded person) who owns a motor lorry and drives the motor lorry when it is being used for road work under a contract between the person and the Roads and Traffic Authority (or between them and others.).
- (2) For the purposes of subclause (1) (e):
- (a) **contract** includes any agreement or arrangement;
 - (b) **motor lorry** has the same meaning as it has in the Traffic Act 1909;
 - (c) **road work** means the carriage of goods or materials for use in (or for the purpose of) the construction or maintenance of roads by or on behalf of the Roads and Traffic Authority;
 - (d) **excluded person** means:
 - (i) a person who employs another to drive or assist in driving a motor lorry when it is being used for road work (except where the person employs another during his or her absence on holidays or long service leave or due to sickness, accident or other reasonable cause);
 - (ii) a person (whether or not a common carrier) who is engaged in the business of transporting for the public generally freight in containers;
 - (e) a person **owns** a motor lorry if
 - (i) the person alone (or with others) owns the motor lorry; or
 - (ii) a proprietary company owns the motor lorry and the person is a director of the company or owns not less than 20 per cent of the issued shares of the company; or
 - (iii) the person has the use of the motor lorry under a contract;

- (f) a person **employs** another if that other person is employed:
 - (i) by the person alone (or with others); or
 - (ii) by a proprietary company and the first-mentioned person is a director of the company or owns not less than 20 per cent of the issued shares of the company;
- (g) a person who has a beneficial interest in a motor lorry or shares is taken to be the owner of the motor lorry or shares;
- (h) ownership or employment by any one or more members of a partnership is taken to be ownership or employment by all members of the partnership;
- (i) a contract made with any one or more members of a partnership is taken to have been made with all the members of the partnership.

Inspector's certificate of authority

122. For the purposes of section 728 (3) of the Act, an inspector is required to produce the certificate of authority:

- (a) if requested to do so by the occupier of any premises which the inspector enters pursuant to section 729 of the Act: or
- (b) if requested to do so by a person whom the inspector requires to produce anything or to answer any question pursuant to section 729 of the Act.

Industrial Magistrate—transitional arrangements relating to civil procedure

123. (1) For the purposes of section 736 of the Act, the provisions of the Industrial Arbitration (General) Regulations relating to the procedure and other matters relating to the exercise of the jurisdiction of an industrial magistrate, continue to apply (despite their repeal) to proceedings before the Chief Industrial Magistrate or other Industrial Magistrate.

(2) The above provisions apply with all necessary modifications, including the following:

- (a) references in those provisions to the Industrial Registrar are to be read as references to the Registrar of the Industrial Court;
 - (b) references in those provisions to provisions of the Industrial Arbitration Act 1940 are to be read as references to the corresponding provisions of the Industrial Relations Act 1991.
- (3) This clause does not apply to proceedings for an offence.

Chief Industrial Magistrates. 104A of Justices Act 1902

124. For the purpose of stating a case for the Industrial Court, the Chief Industrial Magistrate is the prescribed person referred to in section 104A of the Justices Act 1902.

Appeals, stated cases etc. from Local Court to Industrial Court

125. For the purposes of section 741 (3) of the Act, the application of the provisions of the Justices Act 1902 and related matters are subject to the provisions of the rules of the Industrial Court relating to those matters, as prescribed by the Industrial Court Rules (Transitional) Regulation 1992.

Savings with respect to arbitrators under Public Hospitals Act 1929

126. (1) In this clause:

“**arbitrator**” means a person appointed as an arbitrator under Part 5C of the Public Hospitals Act 1929 (Visiting medical officers).

(2) The enactment of the Industrial Relations Act 1991 does not affect:

- (a) the appointment of an arbitrator holding office on the commencement of that Act; or
- (b) any proceedings pending, on the commencement of that Act, before an arbitrator under Part 5C of the Public Hospitals Act 1929 or anything done by an arbitrator before that commencement.

(3) A reference in Part 5C of the Public Hospitals Act 1929 to:

- (a) the Industrial Commission of New South Wales or a member of that Commission is to be read as a reference to the Industrial Relations Commission or a member of that Commission; or
 - (b) the Industrial Commission in court session is to be read as a reference to the Full Industrial Relations Commission; or
 - (c) section 57 of the Industrial Arbitration Act 1940 is to be read as a reference to section 14 of the Industrial Relations Act 1991; or
 - (d) section 14 (8) (b) of the Industrial Arbitration Act 1940 is to be read as a reference to section 382 of the Industrial Relations Act 1991.
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EXPLANATORY NOTE

The object of this Regulation is to make provision for matters contemplated by the Industrial Relations Act 1991.

CHAPTER 1 contains the usual preliminary matters.

CHAPTER 2 (Part 1) deals with the form and handing down of awards. The provisions generally continue the procedures in clauses 40–43 of the regulations under the previous Act.

CHAPTER 2 (Part 2) contains ancillary provisions relating to enterprise agreements.

CHAPTER 2 (Part 3) generally continues provisions of the regulations under the previous Act prescribing particulars to be included in pay slips to employees and employers wages records.

CHAPTER 3 provides that the new grievance and dispute settlement procedures to be included in new awards and agreements are also taken to be included in existing awards and industrial agreements that contain no such procedures.

CHAPTER 4 contains ancillary provisions relating to dual Commonwealth/State appointments to the Industrial Commission, nominations for Contract Regulation Committees, the regions for the operation of the Industrial Relations Commission and the filing of documents in the Industrial Registry.

CHAPTER 5 deals with industrial organisations. The Chapter:

- makes provision with respect to the procedure for the registration of industrial organisations;
- contains ancillary provisions relating to the rules of organisations;
- specifies the procedure for holding elections of officers of industrial organisations;
- prescribes the auditing and financial records of industrial organisations;
- prescribes ancillary provisions relating to the amalgamation of industrial organisations and to the suspension or cancellation of their registration;
- applies the regulatory provisions applying to industrial organisations incorporated under the proposed Act to continuing industrial organisations that are incorporated under other Acts.

CHAPTER 6 contains provisions relating to the regulation of organisations of contract drivers or carriers.

CHAPTER 7 contains ancillary provisions relating to the licensing of employment agents, including an annual fee of \$40 for a licence.

CHAPTER 8 contains ancillary provisions, including approved forms, the requirement to exhibit copies of awards at work places, prescribing offences that may be dealt with by penalty notice, continuing the categories of deemed workers and transitional provisions.